

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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IN THE MATTER

OF

RICHARD F. DAINES, M.D., as Commissioner of Health of  
the State of New York, to determine the action to be taken  
with respect to:

QC-MEDI NEW YORK, INC.

Respondent,

as operator of

GENTIVA HEALTH SERVICES  
200 Ellwood Davis Road  
Liverpool, NY 13088

STIPULATION

AND

ORDER

HHC-08-07

arising out of alleged violations of Article 36 of the Public  
Health Law of the State of New York and Title 10 (Health)  
of the Official Compilation of Codes, Rules and Regulations  
of the State of New York

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WHEREAS, the New York State Department of Health (the "Department") has  
conducted surveys and inspections of Gentiva Health Services - Liverpool, and found  
alleged violations of Article 36 of the Public Health Law and Title 10 (Health) of the  
Official Compilation of Codes, Rules and Regulations of the State of New York (10  
NYCRR); and

WHEREAS, a Statement of Deficiencies resulting from the Department's survey  
and complaint investigation completed on December 28, 2006 was issued to the  
Respondent, together with follow-up surveys dated February 12<sup>th</sup> and 13<sup>th</sup>, 2007 and  
March 19, 2007 (collectively, the "Statement of Deficiencies"); and

WHEREAS, the Respondent submitted a plan of correction to the Department to address the Statement of Deficiencies. By letter dated April 24, 2007, the Department informed the Respondent that the Plan was acceptable; and

WHEREAS, prior to the service on the Respondent of a Notice of Hearing and Statement of Charges and the commencement by the Department of an administrative enforcement action based on the alleged violations, the Department and the Respondent engaged in settlement discussions; and

WHEREAS, the parties now wish to resolve this matter by means of a settlement instead of an adversarial administrative hearing.

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The matter relating to alleged violations of Article 36 of the Public Health Law and 10 NYCRR, as set forth in the Statement of Deficiencies dated December 28, 2006, together with the follow-up surveys dated February 12<sup>th</sup> and 13<sup>th</sup>, 2007 and March 19, 2007, is hereby settled and discontinued with prejudice upon the terms and conditions set forth in this Stipulation and Order.

2. Solely for the purpose of resolving the instant administrative matter, the Respondent admits the existence of substantial evidence of violations of 10 NYCRR:

763.4(a)	Policies and procedures of service delivery
763.4(h)	Policies and procedures of service delivery
763.6(b)	Patient assessment and plan of care
763.6(e)	Patient assessment and plan of care
763.11(a)	Governing Authority
763.11(b)	Governing Authority

The Stipulation and Order is not intended for use in any other forum, tribunal or court, including any Medicare or Medicaid enforcement proceeding and including any civil or

criminal proceeding in which the issues or burden of proof may differ. The execution of this Stipulation and Order is without prejudice to the Respondent's rights, defenses and claims in any other matter, proceeding, action, hearing or litigation not involving the Department. It is agreed that the Stipulation and Order is not an admission of liability or wrongdoing with respect to any allegations of medical malpractice that may be made in a civil action for monetary damages.

3. Neither the execution of this Stipulation and Order nor the underlying facts alleged in the above-referenced Statement of Deficiencies shall form the sole basis for an adverse determination by the Department in reviewing an application by the Respondent for any permit or approval issued by the Department, as to the character and competence of the Respondent.

4. Pursuant to Sections 12 and 206 of the Public Health Law, a civil penalty of \$12,000 is assessed against the Respondent. The Respondent shall pay that amount within thirty (30) days from the effective date of this Stipulation and Order.

5. Payment shall be made to the New York State Department of Health, Bureau of Accounts Management, Corning Tower, Room 1258, Empire State Plaza, Albany, New York 12237-0016. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection and non-renewal of permits and licenses. [Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32].

6. The Respondent consents to the issuance of this Stipulation and Order,

7. This Stipulation and Order shall be effective upon service on Respondent or Respondent's attorney or representative of a fully executed copy by personal service or by certified or registered mail.

QC-MEDI NEW YORK, INC.

BY:

**TONY STRANGE**  
President and Chief Operating Officer

AGREED AND SO ORDERED:

NEW YORK STATE DEPARTMENT OF HEALTH

BY:

**RICHARD F. DAINES, M.D.**  
Commissioner of Health

**Inquiries to:** Gretchen Fantauzzi, Senior Attorney  
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**Mail Payment To:**

New York State Department of Health  
Bureau of Accounts Management  
Corning Tower, Room 1258  
Empire State Plaza  
Albany, New York 12237-0016